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BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Children's Television Obligations	)	MM Docket No. 00-167
Of Digital Television Broadcasters	)	

To: The Commission

COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby submits its Comments on the Notice of Proposed Rule Making ("NPRM"), FCC 00-344, released October 5, 2000 in the above-referenced proceeding. In the NPRM, the Commission is seeking comments on issues relating to the obligation of digital television ("DTV") broadcasters to serve the child audience. The NPRM focuses on two areas: (a) the existing requirement that television licensees air educational and informational programming for children, and (b) the requirement that television licensees limit the amount of advertising in children's programs. The NPRM raises questions as to how those requirements should be applied to digital television broadcasting. For the reasons set forth herein, Sinclair submits that additional burdens are premature at this point in time and that the Commission has failed to establish that increased regulatory burdens are warranted.

I. The Commission's Proposals Are Premature.

The transition to digital television has not proceeded smoothly. While a number of stations are broadcasting from digital facilities, few members of the public are receiving digital

signals. Unfortunately a number of factors have delayed the transition such as the difficulties with the 8VSB transmission standard and the debate over using COFDM as a standard; the lack of standards for digital receivers; the lack of availability of reasonably priced digital receivers; the lack of cable carriage for broadcasters' digital signals; and the question of whether the must carry rules will apply to digital signals. In the meantime, other video programming providers who are unconstrained by government regulation are moving forward. Given these difficulties and the competitive environment that broadcasters face, the Commission should not at this time impose substantial new costly and burdensome requirements. It is far more important to see that digital broadcasting actually comes to fruition and that free over-the-air broadcasting survives.

II. The Proposal To Extend the Requirement that Broadcasters Air Educational and Informational Programming for Children to All DTV Program Streams Violates the Telecommunications Act of 1996.

In the NPRM, the Commission concludes that "[o]ur current three-hour children's core educational programming processing guideline applies to DTV broadcasters." (NPRM at para. 15). But the Commission asks whether the processing guideline should apply to only one digital broadcasting program stream, to more than one program stream or to all program streams including services offered for a fee. The Telecommunications Act of 1996 (the "1996 Act") reflects the Congressional recognition that distinct communications technologies and services are converging and disparate legal treatment should cease. Section 336(b)(3) of the 1996 Act requires the FCC to apply to any ancillary or supplementary services offered by DTV broadcasters "such of the Commission's regulations as are applicable to the offering of analogous services by any other person." 47 U.S.C. Section 336(b)(3). Under Section 336(e) of the 1996 Act, DTV licensees who offer ancillary or supplementary services will be required to pay fees equivalent to the cost of acquiring their licenses by competitive bidding.

The Commission has previously determined that subscription video services are not broadcast services subject to Title III obligations where there was no specific legislation bearing on the issue. Here, there is compelling legislative language stating that DTV broadcasters airing ancillary or supplementary services should be treated like any other person offering such services. Since no other person offering such services as datacasting or internet access is required to provide children's educational and informational programming, the Commission may not require broadcasters to air educational and informational programming for children on the channels used for ancillary or supplementary services. Indeed, since broadcasters are paying a fee for such use, the public interest model that is applied to broadcasting is not an appropriate model for such services.

Moreover, even where broadcasters are not providing an ancillary or supplementary service, the children's programming requirement should not be extended to all program streams. There are many possible multi-casting models that may develop and imposing additional children's programming requirements at this time will thwart the potential of digital television. For instance, a broadcaster may run sports programming on one program stream and financial news on another. It would not be reasonable or practical to require that broadcasters air additional hours of children's programming on these program streams and children are not likely to make up much of the viewing audience. Broadcasters should have the flexibility to experiment with the digital program streams before any additional regulatory requirements are imposed. As long as a licensee fulfills its children's programming commitments on its main channel, no additional requirements should be imposed.

III. The Commission Has Not Established A Foundation for Requiring Additional Educational Programming.

In the NPRM, the Commission seeks comment on various proposals that have been suggested by public interest groups to expand the number of hours of educational and informational children's programming. These proposals include the following: (a) that DTV broadcasters devote three percent of their programmable broadcast hours per week to core children's educational programming; (b) that broadcasters meet their quantified core programming obligation either through their own programming or by paying other networks or channels to air these hours or both; or (c) that DTV broadcasters have the option of satisfying their children's programming obligation by providing some combination of: (i) additional core educational and informational programming, (ii) broadband or datacasting services to local schools, libraries or community centers, or (iii) support for the production of children's programming by local public stations or other noncommercial program providers. The NPRM also claims that the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters has suggested requiring digital broadcasters to air on their main channel no less than one hour a day of children's educational programming (NPRM at para. 23).

Sinclair does not believe that a requirement for more than three hours of children's educational programming per week is necessary because of the variety of sources from which children may obtain educational information. The Commission has not conducted any kind of market-by-market analysis to determine how much children's programming is airing in a particular market and whether the amount that is airing is insufficient. Moreover, the Commission seems to be ignoring the critical fact that there are basic cable channels such as Nickelodeon that air substantial quantities of programming designed for children and that public television stations likewise air substantial amounts. Significantly, cable channels airing

children's programming are not subject to the rigorous regulatory requirements and paperwork that face television broadcasters. Educational programming for children is also available by satellite, and educational material is available on the Internet and in computer software programs. Indeed, there is more educational material available for children now than at any time in recorded history. And lest we forget, educators want children to read books and not focus solely on television.

The specific proposals proffered in the NPRM to increase children's programming are either unfounded or unrealistic. For instance, while the NPRM asserts that the Advisory Committee Report described an approach that would require a digital broadcaster to air no less than one hour a day of children's educational programming on its main channel, the Committee made no such recommendation. Instead, one member of the Committee, Ms. Lois Jean White, made such a suggestion in a Separate Statement (Advisory Committee Report at page 98). With all due respect, Ms. White, the National President of the PTA at the time of her Statement, has no background in educational programming for children or in television broadcasting. The other proposals advanced in the NPRM are inherently unrealistic and unworkable.

In addition to ignoring the plethora of educational material that exists for children, the NPRM fails to consider the cost to DTV broadcasters of adding new requirements. Children's programming is expensive to produce, and as a result of the growth of other entertainment streams, particularly cable television channels, the audience for such programming has diminished greatly in recent years. It has been Sinclair's experience that it is difficult to sell advertising during children's programming – a problem that is made worse by the stringent rules that the FCC applies to commercial advertising during children's programming. If DTV stations are required to air more than the present three hours of educational programming presently

carried by analog stations, the cost of doing so is likely to diminish other kinds of programming – for instance, local news budgets are likely to be cut and/or there will be reductions in staff.

IV. The Commission Should Resolve Its Pending Rule Making on the Network – Affiliate Relationship Before Dealing with the Question of Preemptions.

The NPRM also seeks comments on how the preemption of core educational programs by DTV broadcasters should be treated. Expressing a concern about the current level of preemptions, the Commission is considering whether to adopt another approach to preemptions in the digital context. Specifically, the Commission asks whether it should continue to exempt preemptions for breaking news from the requirement that core programs be rescheduled. The NPRM also asks whether a station should be allowed to shift a preempted program to another digital program stream and, if so, whether the substitute program stream should be of the same technical quality as the stream on which the program was scheduled.

With respect to the question of preemptions of children's programming, Sinclair notes that the Commission currently has pending before it a rule making proceeding to reexamine the relationship between networks and their affiliates. *See Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates,* MM Docket No. 95-92, 60 FR 35369 (released June 15, 1995). Resolution of this rule making proceeding bears on the issue of preemptions. Broadcast licensees have contractual commitments, which include severe penalties up to and including, in certain circumstances, termination of affiliation agreements, for the failure to air programming provided by their networks. The issue of preemptions often arises when the network substitutes sports programming – sometimes involving activities in a different time zone such as the Wimbledon tennis tournament – or when there is breaking news. Under most affiliation agreements, licensees do not have the option of continuing their children's programming when the network preemptions occur. Indeed, a

licensee can be at serious risk of jeopardizing its network affiliation agreement if it refuses to air programming provided by the network. Unfortunately, the NPRM ignores this important dynamic. Resolution of the pending rule making proceeding and the important issues raised therein will thus affect the treatment of the preemption issue. The question of whether to preempt a children's program should be left to the discretion of the broadcaster who is in the best position to assess its audience's desires.

V. There Is No Basis for Changing the Definition of Commercial Matter.

The NPRM invites comment on whether the Commission should revise its definition of "commercial matter" to include types of program interruptions that are not currently counted toward the commercial limits during children's programming. For instance, the definition of "commercial matter" excludes promotions for upcoming programs that do not contain sponsor-related mentions and also excludes public service announcements promoting not-for-profit activities and airtime sold for purposes of presenting educational and informational matter. This is a matter that the Commission carefully considered when it adopted rules implementing the Children's Television Act of 1990. *See Report and Order in the Matter of Policies and Rules Concerning Children's Television Programming, MM Docket No. 90-570*, FCC 91-113 (released April 12, 1991), paras. 4-7 and *Memorandum Opinion and Order*, FCC 91-248 (released August 26, 1991), paras. 7-11. There is no evidence that the definition is not working and the inclusion of such matter as PSAs within the definition of "commercial matter" is likely to result in a reduction in the number of PSAs aired during children's programming which would disserve the public interest. Similarly, promotions for upcoming children's programs are beneficial because they alert children and their parents to the times when programs will be aired – something that the FCC is encouraging. Finally, as the NPRM notes, the congressional history

indicates that the framers of the Children's Television Act of 1990 intended that the definition of "commercial matter" be consistent with the definition used in the license renewal form.

Conclusion

For the reasons set forth above, Sinclair respectfully submits that the Commission should apply its present three hour a week processing guideline for children's educational and informational programming to digital television broadcasting and should not change the definition of "commercial matter."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mary Nolan, a secretary in the law firm of Shaw Pittman, do hereby certify that true copies of the foregoing ***Comments of Sinclair Broadcast Group, Inc.*** were served by first class mail, postage pre-paid, on this 18th day of December 2000 to the following:

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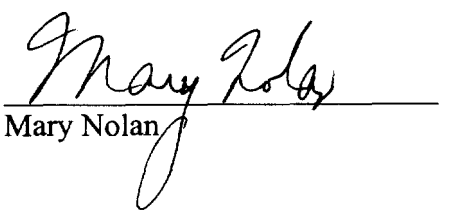

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